IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

WP(C).No. 2362 of 2007(F)

PETITIONER:

K.B.SIDHARTHAN, KUNNATH HOUSE,
POOTHOLE P.O., THRISSUR.

BY ADV. SRI.THOMAS ABRAHAM
SRI.K.B.ARUNKUMAR
SRI.DIPU.R
SRI.A.I.FAISAL

RESPONDENTS:
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1. THE KERALA STATE FINANCIAL ENTERPRISES,
BHADHRATHA, P.B.NO.510, MUSEUM ROAD,
THRISSUR, REPRESENTED BY ITS MANAGING DIRECTOR.

2. THE MANAGER, K.S.F.E. MAIN BRANCH,
THRISSUR.

3. THE MANAGER (RR), K.S.F.E. MAIN BRANCH,
THRISSUR.

4. THE DEPUTY TAHASILDAR (REVENUE RECOVERY)
K.S.F.E. P.B.NO.510, MUSEUM ROAD, THRISSUR.

BY ADV. SRI.M.L.SAJEEVAN, SC, KSFE LTD.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUEC OPY OF THE SALE NOTICE ISSUED BY R4.

P2: TRUE COPY OF REPRESENTATION DT.28.8.2002.

P3: TRUE COPY OF JUDGMENT DT.7.7.2006 IN O.P. NO.28223/2002.

P4: TRUE COPY OF STATEMENT ISSUED BY R3.

P5: TRUE COPY OF LETTER DT.5.1.2007 ISSUED BY R1 TO PETITIONER.

P6: TRUE COPY OF RECEIPT DT.8.1.2007 EVIDENCING PAYMENT.

P7: TRUE COPY OF REPRESENTATION DT.10.1.2007 SUBMITTED BY PETITIONER.

TRUE COPY

P.A. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.2362 of 2007

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Dated this the 18th day of June, 2007.

JUDGMENT

The petitioner joined a kury on 7.6.1997 and simultaneously availed a loan under the NCL scheme at a high rate of interest of 21%. The kury was prized on 11.1.1999 for Rs.9,49,500/-. It is seen that the prize money was adjusted after 45 days and the credit balance in petitioner's account as per statement furnished by KSFE is Rs.3,24,445/-. The petitioner has defaulted chitty subscription thereafter leaving a net demand of Rs.2,65,615/- together with interest from 12.6.2000. The petitioner has remitted the entire balance liability excluding interest i.e. Rs.2,65,615/- which is evidenced by Ext.P6 receipt issued on 8.1.2007. The default in chitty account started from 21st instalment onwards. It is not clear from the statement furnished by KSFE as to whether interest is charged on the defaulted instalments. Since petitioner had a credit balance of Rs.3,24,445/- after adjustment as on 25.2.1999, there was no justification to treat the petitioner as a defaulter in the kury subscriptions until full credit balance is absorbed in instalments. Since petitioner discontinued payment, KSFE ought to have retained the credit balance in a current account or as short

term deposit to adjust the subscriptions from out of credit balance available with the petitioner. On the face of it, KSFE after retaining the credit balance allowed the subscription arrears to mount up and permitted set off of 15 instalments together which goes against the interest of the petitioner in as much as petitioner is called upon to pay interest and penal interest for default in subscriptions at a time when KSFE was retaining substantial amount in petitioner's account. In the circumstances, W.P. is disposed of directing KSFE to rework liability by treating the balance amount of Rs.3,24,445/- as a credit balance available for adjustment althrough in petitioner's account, set off each subsequent subscription until the entire amount is set off without denying dividend to the petitioner. However, as and when full amount is absorbed towards subscription, petitioner is liable to pay interest for the balance defaulted subscriptions in the chitty account. The amount paid by the petitioner will be adjusted towards balance chitty subscription and interest thereon and if balance is due, respondents are free to recover the same. The W.P. is disposed of directing the second respondent to rework liability as above and recover balance if any due from the petitioner and give a fresh statement of accounts within two weeks from the date of production of copy of this judgment. Recovery proceedings will be kept in abeyance for two months from now for settling

the liability. Recovery thereafter will be based on revised statement issued by KSFE. In view of the payment, all the previous recovery notices will have to be modified reducing the liability to the amount to be determined by KSFE as above. Since petitioner has made payment voluntarily, no collection charges should be recovered or adjusted from petitioner.

C.N.RAMACHANDRAN NAIR
Judge

pms